

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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ANTHONY BLACK,

v.

LEGRAND, WARDEN, et al.,

Petitioner,

Respondents.

Case No. 3:13-cv-00049-MMD-VPC

ORDER

Petitioner has submitted a motion to correct due process violation and relief from judgment (dkt. no. 9). He argues that the Court should have given him the opportunity to respond before dismissing this action on its own motion. See *Wentzell v. Neven*, 674 F.3d 1124 (9th Cir. 2012).

Petitioner incorrectly states what the Court did with this action. The Court has already considered, and denied on the merits, a habeas corpus petition challenging the same judgment of conviction. This Court is without jurisdiction to consider his petition unless petitioner first obtains from the court of appeals permission to file a second or successive petition pursuant to 28 U.S.C. § 2244(b). This Court did not dismiss the action. Rather, pursuant to Circuit Rule 22-3(a), it referred the action to the court of appeals for a determination whether petitioner should be allowed to file a second or successive petition. The court of appeals, not this Court, denied petitioner's application.

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1 It is therefore ordered that petitioner's motion to correct due process violation and
2 relief from judgment (dkt. no. 9) is denied.

3 DATED THIS 22nd day of November 2013.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE